

JAN 11 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION

OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of

Billed Party Preference  
for 0+ InterLATA Calls

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CC Docket No. 92-77  
Phase I

Petition for Reconsideration

MCI Telecommunications Corporation (MCI), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby seeks reconsideration of the Commission's Order<sup>1/</sup> in the aforecaptioned proceeding. MCI requests that the Commission implement the 0+ public domain proposal.<sup>2/</sup>

In the Order, the Commission found that the American Telephone and Telegraph Company's (AT&T's) calling card practices have caused consumer and competitive problems in the operator services market because AT&T card customers do not always reach AT&T when they follow its dialing instructions.<sup>3/</sup> However, the Commission concluded that the 0+ public domain proposal would not further the public interest because "the customer inconvenience,

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<sup>1/</sup> In the Matter of Billed Party Preference for 0+ InterLATA Calls, Report and Order and Request for Supplemental Comment, CC Docket No. 92-77, Phase I, FCC 92-465, released November 6, 1992 (Order).

<sup>2/</sup> Under the 0+ public domain proposal, interexchange carrier (IXC) card issuers would be required to either establish and use access codes for proprietary cards, or use 0+ access and open the card validation and billing database to all other IXCs.

<sup>3/</sup> Although AT&T's practices clearly violated Section 201(b) of the Communications Act of 1934, as amended, the FCC failed to so find.

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frustration and potential cost it would impose would outweigh the benefits."<sup>4/</sup>

Accordingly, the Commission declined to require 0+ in the public domain but ordered AT&T to "(1) educate its cardholders to check payphone signage and to use 0+ access only at phones identified as presubscribed to AT&T; (2) provide clear and accurate access code dialing instructions on every proprietary card issued; and (3) make its 800 access code number easier to use."<sup>5/</sup> In addition, the Commission asked for further comment on "methods for compensating operator service providers who continue to receive 0+ dialed proprietary card calls and who wish to transfer those calls to the card issuer for completion."<sup>6/</sup>

The Commission's Order incorrectly weighed the costs and benefits of the 0+ public domain proposal. Moreover, the Commission's remedies, the education requirements imposed on AT&T and the possible payment of compensation for 0+ dialed card calls that inappropriately reach an operator service provider (OSP) other than the card issuer, will not eliminate the unwarranted competitive advantage gained by AT&T as a result of its ability to issue a 0+ card and its anticompetitive and misleading marketing practices. Accordingly, MCI urges the Commission to reconsider its Order and implement the 0+ public domain proposal.

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<sup>4/</sup> Order at para. 44.

<sup>5/</sup> Order at para. 57.

<sup>6/</sup> Order at para. 64.

As an initial matter, the Commission's action fails to address the anticompetitive and discriminatory behavior engaged in by AT&T in connection with its 0+ card. In the Order, the Commission found that AT&T's marketing practices have created consumer and competitive problems in the operator services market. AT&T deliberately provided misleading and incomplete dialing instructions to its CIID card customers by directing them to always dial 0+ first, even though AT&T knew that callers would not be able to reach AT&T from all locations. Moreover, as found by the Commission in its letter of admonishment released November 16, 1992, AT&T inappropriately instructed local exchange carrier (LEC) cardholders to destroy their LEC 0+ cards and replace them with the AT&T CIID card, which increased the number of AT&T CIID cards in use and, as a result, enhanced AT&T's unfair competitive advantage in the operator services market. Clearly, AT&T should not be allowed to continue to benefit from this behavior. The effect of the Commission's Order, however, is to allow just that.

In addition, AT&T engages in anticompetitive and unreasonably discriminatory practices by allowing LECs to validate its CIID card, but not other common carriers. The Commission inappropriately dismissed this issue as beyond the scope of this proceeding because, according to the Commission, "it focuses on the question of LEC/OSP competition for 0+ intraLATA traffic."<sup>7/</sup> However, the issue is relevant to this proceeding and should have been considered by the Commission

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<sup>7/</sup> Order at para. 63.

because it is further evidence of AT&T's anticompetitive practices in connection with its 0+ card.

The Commission's Order also incorrectly relies on AT&T's statement that, in a 0+ public domain environment, it would keep its CIID card validation database proprietary and require its customers to dial an access code, to determine that the costs of the 0+ public domain proposal outweigh its benefits. According to the Commission, 0+ public domain would lead to customer inconvenience because AT&T CIID cardholders would have to dial an access code, even from phones presubscribed to AT&T where they otherwise could reach AT&T simply by dialing 0+.

It is questionable whether AT&T would actually eliminate 0+ dialing for its card because, as the record demonstrates, many of its customers selected the AT&T card and many of the aggregators presubscribed to AT&T selected AT&T, at least in part, because 0+ dialing is available with the AT&T card. If 0+ dialing with the AT&T card were not available, OSPs would be able to compete for these customers' business and, accordingly, the market would become much more competitive than it is.

In any event, the Commission should not base a decision significantly affecting competition on the threat of a dominant carrier. In effect, AT&T has successfully coerced the Commission into reaching an anticompetitive result by threatening to inconvenience its own customers. AT&T exhibited similar behavior by giving its customers misleading dialing instructions for the CIID card. The fact that AT&T believes that it can institute

policies adverse to its customers is a testament to its dominant position in the operator services market. No competitive carrier can or would jeopardize the interests of its customers in this way. What is even more disappointing is that the Commission has allowed AT&T to dictate the outcome of this proceeding by succumbing to this threat.

A truly competitive operator services market cannot evolve until the Commission eliminates the unfair competitive advantage AT&T has as the only interexchange carrier that can issue a 0+ card. The Commission can do so by implementing billed party preference (BPP) and, until BPP is available, by implementing the 0+ public domain policy.

The Commission also found that it is "uncertain" whether a 0+ public domain approach would substantially aid OSP competition for presubscription locations. According to the Commission, "the major competitive benefit of increased parity in the operator services market claimed by the 0+ public domain proponents would only be realized if AT&T elected to open its CIID card database to its competitors,"<sup>8/</sup> and AT&T would not do so.

The Commission's analysis is incorrect because there would be a competitive benefit if AT&T no longer issued a 0+ card or if AT&T issued a 0+ card and opened its database. As previously mentioned, some customers select the AT&T card because it uses 0+ dialing. Without this advantage, OSPs would have the opportunity to compete for these customers on an equal footing with AT&T.

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<sup>8/</sup> Order at para. 46.

Moreover, as demonstrated by the record in this proceeding, AT&T's ability to issue a 0+ card gives AT&T an advantage in the presubscription of public phones.<sup>9/</sup> AT&T advises premise owners that, because it has a dominant share of the card market and 0+ service, it can accept most of the calling cards in circulation, whereas its competitors cannot accept calls using AT&T's 0+ card. It then informs premise owners that it is in a position to pay a greater amount overall in commissions by virtue of its dominant position in the market segment, and that selection of another carrier would only result in a diminution of the amount of commissions received by them. The result of these untoward marketplace undertakings is that AT&T is able to retain a dominant share of this business by extinguishing the insubstantial competition that followed payphone presubscription. As further evidence of this, MCI has learned that the only top twenty hotel chain previously not presubscribed to AT&T recently selected AT&T as its future presubscribed carrier. Moreover, this decision was influenced by AT&T's commitment to pre-pay \$1 million in commission payments at the beginning of each year.<sup>10/</sup>

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<sup>9/</sup> Order at para. 20

<sup>10/</sup> This fact also undermines the Commission's conclusion concerning the relationship between commission payments and public phone presubscription. In any event, the Commission's conclusion that public phone presubscription is not governed exclusively by the size and amount of commission payments because AT&T pays commissions for less than 40 percent of its presubscribed locations is faulty. The percentage of locations that receive commissions is not particularly important because AT&T does pay commissions to premise owners and aggregators with large volumes of operator service calls, such as hotels.

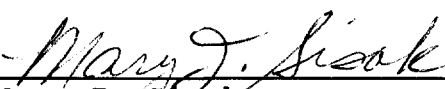
Finally, the Commission found that the competitive problems created by AT&T's marketing practices could be corrected by requiring AT&T to educate its customers concerning the appropriate procedure to follow to reach AT&T. In addition, the Commission found that the other benefits of the 0+ public domain proposal, such as the prevention of AT&T CIID card calls reaching OSPs and resulting in the imposition of unrecoverable costs, could be achieved through its compensation proposal. These measures, however, will do nothing to reduce AT&T's dominant position in the operator services market because of its ability to offer a 0+ card.<sup>11/</sup>

Based on the foregoing, MCI respectfully requests that the Commission reconsider its decision not to implement the 0+ public domain proposal.

Respectfully submitted,

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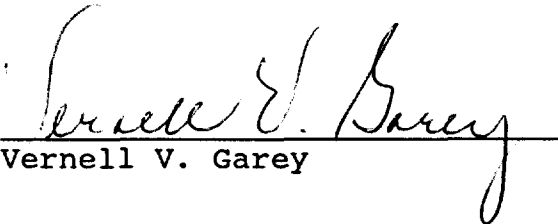
Dated: January 11, 1993

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<sup>11/</sup> In fact, the dialing instructions AT&T intends to give its customers as part of its education effort could actually encourage AT&T customers to complain to aggregators presubscribed to other carriers to force them to switch to AT&T so that the customers can access AT&T through dialing 0+. See AT&T Compliance Plan, CC Docket No. 92-77, December 23, 1992.

CERTIFICATE OF SERVICE

I, Vernell V. Garey, do hereby certify that on this 11th day of January, 1993, copies of the foregoing "**Petition for Reconsideration**" in CC Docket No. 92-77 were served by first-class mail, postage prepaid, unless otherwise indicated, upon the parties on the attached list.

  
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